

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

**MAR 26 2009**

**Clerk, U.S. District and  
Bankruptcy Courts**

William Thaddeus Anderson  
4414 15<sup>th</sup> Street NW  
Washington, DC 20011  
(202) 290-2333

Plaintiff,

v.

U. S. Department of State  
2201 C Street NW  
Washington, DC 20520

Defendant.

**COMPLAINT FOR  
INJUNCTIVE RELIEF**

Civil Action No.

**Case: 1:09-cv-00569**

**Assigned To : Huvelle, Ellen S.**

**Assign. Date : 3/26/2009**

**Description: FOIA/Privacy Act**

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant U.S. Department of State ("State Department"), and the waiver of any FOIA processing fees assessed by State Department in plaintiff's case under FOIA's "representative of the news media" fee waiver.

**Jurisdiction and Venue**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff Anderson is the requestor of the records which defendant is now withholding. Since 2004, plaintiff has maintained outragedmoderates.org, a political blog dedicated to national politics and policy, with an emphasis on government transparency and improving access to government information. Plaintiff has requested the records for publication on his blog and by other related means described in the dissemination plan included in the request made to the defendant.

4. Defendant State Department is a Department of the Executive Branch of the United States Government. The State Department is an agency within the meaning of 5 U.S.C. § 552(f).

### **Statement of Facts**

5. By letter dated February 11, 2009, plaintiff requested access to “the following records from the files of former Secretary Colin Powell, former Deputy Secretary Richard Armitage, and former Chief of Staff at the State Department Laurence Wilkerson, between the dates of January 24, 2003 and February 3, 2003: all electronic and/or paper versions of the presentation regarding intelligence on Saddam Hussein's regime in Iraq, which was presented to former Deputy Secretary of State Richard Armitage by I. Lewis Libby on January 25, 2003, and all memoranda, drafts, notes, emails and other communications which refer to the presentation.” Plaintiff also requested that any processing fees assessed by the State Department in this request be waived under 5 U.S.C. § 552(a)(4)(A)(ii)’s “representative of the news media” waiver, and provided a detailed explanation of why he meets the statutory criteria, including exhibits of samples of his work as a blogger and various evidence of his dissemination of that work. A copy of the request is attached to this complaint.

6. The State Department’s Office of Information Programs and Services received the request on February 19, 2009. A photocopy of the U.S. Postal Service certified mail receipt showing that the State Department received the request on February 19, 2009 is attached to this complaint.

7. As of the date of this complaint, twenty-five working days have passed since the defendant State Department’s Office of Information Programs and Services received plaintiff’s request. The defendant still has not responded to the February 11 request or released the records, in violation of 5 U.S.C. § 552(a)(6)(A)(i)’s requirement that Freedom of Information Act requests must be processed within twenty working days.

8. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request to defendant State Department.

9. Defendant State Department has wrongfully withheld the requested records from the plaintiff.

10. Plaintiff’s request should be expedited under FOIA’s “compelling need” standard, because the records sought involve a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence” (28 C.F.R. § 16.5(d)(1)(iv)), pertain to a matter about which there is an “urgency to inform the public about an actual or alleged Federal Government activity,” and plaintiff is “a person primarily engaged in disseminating information.” (5 U.S.C. § 552(a)(6)(E)(v)(II)). As evidence that the records sought meet this standard, plaintiff cites the current public debate over whether a “truth commission” should be appointed to investigate the conduct of the Bush administration’s handling of the war on terror. Senator Patrick Leahy (D-Vt.) has proposed a commission which would investigate torture policies and other key decisions made by the Bush administration, “including intelligence matters before and during the Iraq war.” (Phillip Rucker, *Leahy Proposes Panel To Investigate Bush Era*, Washington Post, February 10, 2009 at A04). Leahy’s calls for a truth commission and the recent release of controversial Iraq documents have sparked a national debate over the issue (Cindy Saine, *New Details of Torture Allegations Spark*

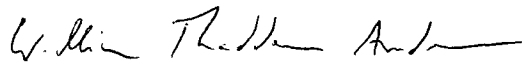
*New Debate*, Voice of America, March 23, 2009; *Truth or Vengeance?*, Chicago Tribune, March 23, 2009 (editorial); Thomas R. Pickering and William J. Sessions, *Moving Forward By Looking Back*, Washington Post, March 23, 2009 (op-ed)). The release of the information contained in the requested documents would be likely to have a substantial impact on the current public debate over the appointment of a truth commission; therefore, the information sought is of a widespread and exceptional media interest, involves questions about the government's integrity which affect public confidence, and pertains to a matter about which there is an urgency to inform the public and Congress about Federal Government activities. Plaintiff certifies that his statements concerning the need for expedited processing are true and correct to the best of his knowledge and belief.

**Requested Relief**

WHEREFORE, plaintiff prays that this Court:

- A. order defendant to provide access to the requested records;
- B. order defendant to waive any FOIA processing fees charged to plaintiff related to this request, because plaintiff qualifies for FOIA's "representative of the news media" fee waiver;
- C. provide for expeditious proceedings in this action;
- D. award plaintiff litigation costs, and in the event that pro se plaintiff seeks outside counsel, award reasonable attorney fees, as provided in 5 U.S.C. § 552(a)(4)(E); and
- E. grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

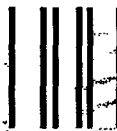


WILLIAM THADDEUS ANDERSON, Pro Se  
D.C. Bar No. 974860

4414 15<sup>th</sup> Street NW  
Washington, DC 20011

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*Thad Anderson*  
*4414 15th Street NW*  
*Washington, DC 20011*


FREEDOM OF INFORMATION ACT REQUEST

February 11, 2009

Office of Information Programs and Services  
A/ISS/IPS/RL  
U. S. Department of State  
Washington, DC 20522-8100

Dear Sir or Madam,

Pursuant to the Freedom of Information Act, 5 U.S.C. section 552, I respectfully request the following records from the files of former Secretary Colin Powell, former Deputy Secretary Richard Armitage, and former Chief of Staff at the State Department Laurence Wilkerson, between the dates of January 24, 2003 and February 3, 2003: all electronic and/or paper versions of the presentation regarding intelligence on Saddam Hussein's regime in Iraq, which was presented to former Deputy Secretary of State Richard Armitage by I. Lewis Libby on January 25, 2003, and all memoranda, drafts, notes, emails and other communications which refer to the presentation.

For the purposes of identifying the presentation and related communications, note that agency records may refer to it as the work product of the Pentagon's Office of Special Plans or one of its members, including, but not limited to, Douglas Feith and Abram Shulsky, or as the work product of I. Lewis Libby and/or others from the Office of the Vice President. Pages 289-301 of Bob Woodward's book "Plan of Attack" describe Libby's January 25, 2003 presentation as "the latest version of the case against Saddam," and also as "a 60 page version of the case." Other media reports have described the presentation as being either longer or shorter than 60 pages; for example, a Voice of America article dated 2/9/07 noted that Wilkerson "saw the 48-page analysis produced by Feith's office as he prepared Secretary Powell's critical speech to the United Nations on Iraq's supposed weapons of mass destruction and its alleged links to al-Qaida."

Additionally, I respectfully request a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)'s exception for records which are not sought for "commercial use" and where the requester is "a representative of the news media." I am requesting these records for publication on my political blog [outragedmoderates.org](http://outragedmoderates.org), which I have maintained since 2004 as the sole creator, researcher, and blogger. In the event that the Department determines that I do not qualify for the news media fee waiver, I am willing to pay fees for this request up to a maximum of \$25. If you estimate that the fees will exceed this limit, please inform me first.

Under the precedent of Center For Public Integrity vs. US Department of Health and Human Services, Civil Action No. 06-1818 (JDB) (D.D.C. August 3, 2007), online content that is cited in FOIA fee waiver requests, but not provided directly to the agency, cannot be considered part of the record before the agency. To address this issue, requester has enclosed printouts of relevant online content, which are referenced by exhibit letter. In the interest of ensuring these

exhibits' authenticity, requester has included automatic URL and Date stamps in the printouts wherever possible.

## I. COMMERCIAL USE REQUIREMENT

The "news media" fee waiver provision requires that a requester show that the requested records are not sought for commercial purposes. The requester meets FOIA's "not sought for a commercial use" requirement, because the primary purposes of outragedmoderates.org are to disseminate political commentary and selected government documents, and the website neither charges a subscription fee nor accepts advertising. Therefore, requester would not reap any foreseeable commercial benefit from any potential increase in readership which might result from the blog's publication of the requested documents; to the contrary, any such increase in traffic could induce a financial loss, as it may result in higher bandwidth charges.

## II. REQUESTER QUALIFIES FOR THE "NEWS MEDIA" FEE WAIVER

### A. The OPEN Government Act of 2007 Extended FOIA's "News Media" Waiver to Bloggers

FOIA, as amended in 2007 by Public Law No. 110-175, 121 Stat. 2524 (the OPEN Government Act of 2007), included a new provision clarifying the meaning of the phrase "representative of the news media":

"In this clause, the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term 'news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination." 5 U.S.C. § 552(a)(4)(A)(ii).

The legislative history of the OPEN Government Act of 2007 shows that both houses of Congress intended for the new provision to include citizen journalists and bloggers. In the last floor statement before the House voted to pass the law, Rep. Mark Udall (D-Co.) read into the House record a Rocky Mountain News editorial advocating for the law's passage. Part of the editorial stated that under the new law, "Citizen journalists and freelancers would gain new credibility . . . The amended law would force agencies to consider any request to disseminate

information to a broad audience as legitimate, particularly if the party making the request has any record of publication (including bloggers).” (Representative Udall (CO). “Freedom of Information Act Amendments of 2007.” CONG. REC. 153 H2507 (daily ed. March 14, 2007) (statement of Rep. Udall). Similarly, when the OPEN Government Act of 2007 came before the Senate, Sen. Patrick Leahy (D-Vt.), one of the bill’s lead sponsors, stated in his floor statement that “the OPEN Government Act will protect the public’s right to know, by ensuring that anyone who gathers information to inform the public, including freelance journalists and bloggers, may seek a fee waiver when they request information under FOIA.” CONG. REC. 153 S15704 (daily ed. December 14, 2007) (statement of Sen. Leahy).

In light of the OPEN Government Act of 2007’s provision clarifying the meaning of FOIA’s “representative of the news media” as including “alternative media,” and the legislative history showing that members of Congress specifically contemplated blogs as potential recipients of the news media fee waiver under the new law, the Department cannot deny requester’s claim for the news media waiver on the basis of his status as a blogger, and must evaluate it by the standard added to 5 U.S.C. § 552(a)(4)(A)(ii) in 2007.

#### B. Requester’s Blogging Meets the Definition of “Representative of the News Media” in FOIA

The requester’s work as outragedmoderates.org’s sole creator and blogger qualify him as a “representative of the news media” under the meaning of 5 U.S.C. § 552(a)(4)(A)(ii). First, requester’s work related to outragedmoderates.org meets the subject matter requirement added to 5 U.S.C. § 552(a)(4)(A)(ii) in 2007, which defines “news” as “information that is about current events or that would be of current interest to the public.” The blog primarily covers current events and matters related to American politics which are of current interest to the public, including electoral politics, domestic and foreign policy issues, and government transparency. Moreover, the records sought by the requester pertain to that definition of “news,” because they involve the current war in Iraq, and because the debate over the rationales given for the invasion of Iraq is a topic of substantial current interest to the public.

FOIA’s amended news media fee waiver provision defines “representative of the news media” as “a person or entity that blogging and other activities related gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” As a preliminary definitional matter, the requester’s blogging and other activities related to outragedmoderates.org qualify him as a “person” involved in the activities under the meaning of FOIA. In the context of this case, “person” and “entity” are almost interchangeable, because requester is outragedmoderates.org’s sole creator and blogger, and any and all references made to the blog’s activities in this request, and in the media reports cited in this request, inherently refer to the work of the requester. Though the requester believes that outragedmoderates.org could qualify as an “entity” under the statute, this request files for the news media fee waiver based on the requester as a “person” to avoid standing issues or other issues which might arise from filing as an “entity.”

There are two primary ways requester “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” through outragedmoderates.org: 1) through the blog’s document

analysis posts, and other blog posts which combine source material with political commentary, and 2) through the blog's "Download For Democracy" campaign, which provides a "Government Document Library" of links to PDF files of government documents, and also distributes groups of PDF files of government documents through peer-to-peer networks. The documents disseminated through both aspects of the Download For Democracy campaign have been gathered from disparate sources, and grouped into categories and subcategories which reflect requester's editorial selection and political opinions. While requester by no means claims that outragedmoderates.org matches the National Security Archive in scope or significance, the document analysis posts and the Download For Democracy campaign both share strong functional similarities to the "document sets" in National Security Archive v. Department of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the Archive qualified for the waiver where its staff would gather information from FOIA requests, government reports, and various other sources, "cull those of particular interest in a given subject area to form the core of each document set," and use editorial skills to "make it more accessible to potential users.")

In fact, before requester provides detailed arguments of how his work through outragedmoderates.org meets the "news media" standard, he asks the Department to read disinterested third parties' descriptions of how the blog gathers information, creates a distinct work through editorial skills, and distributes it to an audience. A 2004 Wired.com article about outragedmoderates.org noted the blog's information gathering activities: "The site, launched two weeks ago, has aggregated more than 600 government and court documents to make them available for download." The same article quoted Steven V. Aftergood of the Federation of American Scientists describing the blog's editorial transformation of raw materials into distinct works, and dissemination of those distinct works to an audience (emphasis added): "Aftergood says that although it's possible to get many documents, like congressional debates, through the Government Printing Office, sites like outragedmoderates.org and The Memory Hole help single out the most important documents from thousands of pages of material and put them in context so that readers can know, for example, if one document they are reading contradicts another document that came out a year earlier. **'What these sites do is to provide some editorial selection, to say that out of this undifferentiated universe of government information, here are some interesting things. That's a useful function,'** Aftergood said." (Exhibit A) The Wired.com article mentions the blog's document analysis posts (specifically linking to one), and the Download For Democracy campaign (specifically linking to that page of the blog).

#### 1. The Blog's Document Analysis Posts Meet FOIA's News Media Standard

The first way the requester "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience" through outragedmoderates.org are document analysis posts which combine source material with editorial content in the form of context and political commentary. For example, the June 29, 2004 post "Justifications given for Halliburton's 'Other Than Full and Open Competition' Iraq reconstruction contract" gathered information in the form of a "Justification and Approval" document approving former Halliburton subsidiary Kellogg, Brown, and Root's (KBR's) no-bid contract for Iraq oil services (obtained by Judicial Watch under FOIA), an investigation into Iraq contracting by The Center for Public Integrity, and an article on the KBR scandal in Federal Times. The post is a distinct work created by bringing together information



culled from several raw materials – an image of a key excerpt of the contract, which requester cropped from the full document using image editing software, especially relevant quotes from the Public Integrity report and Federal Times article to provide context about the federal contracting process – punctuated with requester’s original political commentary on the issue: “Considering the Department of Defense’s willingness to skirt basic contracting rules, KBR’s recent track record, and the fact that Vice President Cheney was CEO of Halliburton until 2000, and is still paid \$178,000 per year by the company - it is not surprising that Congressional leaders like Senator Leahy have called for further investigations. When you add the ‘coordinated w VP’s office’ email to the equation, it becomes evident that anything short of a formal Congressional investigation of the KBR contracts is a disservice to the American taxpayer.” (Exhibit B)

Another example of an outragedmoderates.org blog post which meets the information gathering, editorial transformation, and dissemination prongs is the June 21, 2004 post “The Energy Department’s ‘If you were King’ email to a gas industry lobbyist.” The post cited a FOIA release obtained by Judicial Watch and an article in the New York Times which provided context for the document, and added editorial commentary by the requester. (Exhibit C) Note that, in addition to linking to the main page of outragedmoderates.org, the Wired.com article specifically linked to this blog post as part of its discussion of requester’s work. See also February 28, 2006’s “‘Hard to get a good case’: Early Attempts to Link 9/11 and Iraq,” which created a distinct work based in part on a Defense Department staffer’s notes from meetings with Donald Rumsfeld on September 11, 2001, which requester obtained under FOIA in 2006 (hereafter “the Cambone notes”). The blog post used editorial skills to create a unique timeline designed to provide support for requester’s argument that Defense Secretary Rumsfeld “was attempting to use [the 9/11] attacks as a justification for invading Iraq,” citing an excerpt of the Cambone notes, articles from traditional news outlets like the New York Times and the New Yorker, a transcript of a presidential address from the White House website, Bob Woodward’s book *Plan of Attack*, and the 9/11 Commission Report. (Exhibit D) Finally, see also the October 1, 2006 post “The Military Commissions Act: an overview,” which provides an overview of the Military Commissions Act of 2006 which combines excerpts of materials from the Library of Congress, Supreme Court cases, and media outlets along with requester’s political opinions about the legislation. (Exhibit E)

These document analysis posts, and the rest of outragedmoderates.org’s content, have been distributed to a broad national and international audience through the website and various other channels, as discussed in section 3 below. In addition to demonstrating that requester meets the “audience” prong, this evidence of distribution to an audience proves that the information the requester gathers for the posts is “of potential interest to a segment of the public.”

## 2. The Blog’s Download For Democracy Campaign Meets FOIA’s News Media Test

The second way the requester “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” through outragedmoderates.org is the blog’s “Download For Democracy” campaign. While this aspect of outragedmoderates.org’s dissemination of information involves a less obvious form of editorial input than blog posts which feature political commentary in prose

form, it also meets FOIA's definition of "news media." The site's Download For Democracy campaign provides a "Government Document Library" of links to PDF files of government documents, and also distributes groups of PDF files of government documents through peer-to-peer networks. (See excerpt, Exhibit F)

Both the Government Document Library and peer-to-peer networking components of the Download For Democracy campaign meet the FOIA news media waiver's "gathers information of potential interest to a segment of the public" prong. Requester "gathers information" for the library and the peer-to-peer component in the form of documents culled from a wide variety of sources: federal institutions like the Library of Congress and the National Archives, congressional testimony, and FOIA releases obtained by traditional media outlets, advocacy groups like the ACLU and Judicial Watch, and bloggers and other non-traditional-media entities, like The Memory Hole and outragedmoderates.org. This information is "of potential interest to a segment of the public" because it involves American politics and government, and as further evidence of this "potential interest," requester cites the widespread coverage of the Download For Democracy campaign and other aspects of outragedmoderates.org by traditional media outlets and blogs, which will be discussed in section 3.

The Government Document Library meets the FOIA news media waiver's "uses ... editorial skills to turn the raw materials into a distinct work" prong through the editorial selection and categorization of the documents. First, requester's selection of a government document for the library reflects an editorial decision that, out of the millions of government documents which are publicly available, that document fits into the subject matter areas covered by the blog. Most of the documents featured in the library are included because they involve policy debates or other controversies during the blog's five-year existence.

Second, requester's categorization of these documents reflects editorial input, as most of them are grouped under one of the four stated political goals the blog is organized around: "Open and Honest Government," "Protecting America's Health," "Responsible Military Power," and "Defending the U.S. Constitution." On the "Four Things America Agrees On" page, requester states that "The Bush administration has failed mainstream America; its policies have gone against the majority on all four of these principles." (Exhibit G) Within these categories, documents are further grouped under subcategories, such as the "Cheney & Halliburton" subcategory under "Open and Honest Government," which includes links to documents from Judicial Watch, the Center for Public Integrity, and the House Committee on Government Reform, all pertaining to the firm's contracts and former vice president's controversial connections to the firm. Requester's selection of documents from disparate sources, and subsequent grouping of the documents into categories and subcategories which reflect the requester's editorial judgment, constitute using "editorial skills to turn the raw materials into a distinct work" under the revised FOIA.

The Download For Democracy campaign's peer-to-peer component satisfies the "uses ... editorial skills to turn the raw materials into a distinct work" prong because it also uses a selection and categorization process similar to the one described above. When requester disseminates documents through peer-to-peer networks, he uses editorial judgments to group raw materials gathered from disparate sources by subject matter. For example, the "Al Qaeda

Documents” torrent includes the Al Qaeda training manual which was intercepted and released by the Department of Justice in an effort to expose the group’s tactics, and several pre-9/11 letters and notes between Al Qaeda members on their attempts to obtain biological weapons, which were obtained under FOIA by citizen journalist Ross Getman. (Exhibit F)

Once the requester has selected documents and grouped them by subject matter for dissemination through peer-to-peer networks, he uses WinZip to create a zip file from a group of documents, and then uses a third-party BitTorrent networking client to create a new BitTorrent file (or “torrent”) containing the zip file of documents, with a title created by the requester. Then requester makes the torrents available for download by “seeding” the torrents on the network, and posting a link to the torrent on the Government Document Library page and various torrent sites, accompanied by a brief description by the requester explaining the editorial selection of the documents in the torrent and listing the documents’ titles and sources. Requester’s grouping of documents from disparate sources by subject matter, and creation of a completely different type of file for distribution on the BitTorrent network, constitutes using “editorial skills to turn the raw materials into a distinct work” under the revised FOIA.

The Downloading For Democracy campaign and its Government Document Library and peer-to-peer networking components meets the “distribution ... to an audience” prong, having been distributed to a national and international audience through the website and various other channels, as requester discusses in section 3.

### 3. Requester’s Blog Has Distributed His Work to a Large Audience Through Various Channels

FOIA’s news media fee waiver standard, as revised in 2007, does not require that requesters meet any quantitative threshold in terms of distribution of one’s work. It merely requires that the requester produces the appropriate type of work and “distributes that work to an audience,” and notes that “the Government may also consider the past publication record of the requester in making such a determination.” The American Heritage Dictionary of the English Language’s definition of “audience” for written works is “the readership for printed matter, as for a book”; Random House’s definition is “the persons reached by a book, radio or television broadcast, etc.” Requester cannot find a single definition of “audience” which specifies a minimum numerical value beyond the plural language used in the Random House definition, which seems to require more than one reader. Requester asserts that the unqualified use of the term “audience,” when viewed in the context of the legislative history showing that Congress specifically contemplated bloggers and other citizen journalists, reflects congressional intent to make the news media waiver available even to requesters with very small readerships, so long as they meet the gathering and editorial transformation prongs and can provide some actual evidence of an audience.

However, even if the Department interprets the “audience” prong as requiring requesters to show a show a more substantial audience, record of publication outragedmoderates.org over the internet satisfies the news media fee waiver’s distribution component. According to the statistics provided by the blog’s web hosting provider, Go Daddy, outragedmoderates.org logged 1,022,760 page views, from 228,676 distinct IP addresses, between its inception in mid-2004 and the date of this request. (Exhibit H) Requester asserts that this statistical evidence of the

requester's audience through outragedmoderates.org easily meets the "distributes that work to an audience" component of FOIA's news media fee waiver.

In addition to this statistical evidence of outragedmoderates.org's audience, requester offers specific examples of the dissemination channels through which the blog has reached an audience – both to provide further evidence of the size and nature of outragedmoderates.org's audience, and to demonstrate that requester's distribution is not limited merely to an audience of regular readers of the website. In cases involving news media waiver claims by non-traditional media entities, courts have often cited the requesters' use of multiple distribution channels as evidence which helped demonstrate their ability to distribute work to an audience. For example, in VoteHemp, Inc. v. DEA, 237 F. Supp. 2d 55, 59-66 (D.D.C. 2002), the court cited the plaintiff's three-part plan to disseminate the records through its website, through press releases, and through communications with federal and state legislators. Like the plaintiff in that case, requester has distributed his work through several channels besides website itself: press releases issued to traditional media outlets via email and fax, emails to blogs and other web-only media outlets, selected groups of documents disseminated through peer-to-peer networks, email newsletters sent to readers who joined a mailing list, and PowerPoint presentations created and submitted by mail and email to members of the House and Senate Judiciary Committees.

Various aspects of requester's work through outragedmoderates.org has been covered or cited by traditional media outlets including Wired.com, National Public Radio, PC Magazine, The News & Observer, the liberal magazine The American Prospect, and conservative magazine The American Spectator. Internationally, the blog and its work have been covered by The London Guardian (Exhibit I), the German magazine Der Spiegel (Exhibit J), Le Monde (France), El Pais (Spain), Der Standard (Austria), The Hindu (India), The Sydney Morning Herald (Australia), and state-run newspaper The People's Daily Online (China). Most of this coverage, including the Wired.com, PC Magazine, Guardian, and Sydney Morning Herald articles, can be traced to directly to press releases the requester sent to media outlets by email and fax, or traced indirectly to those press releases (for example, the Le Monde and El Pais articles seem to have been based primarily on the Wired.com article, and the articles in The Hindu and The People's Daily Online were reprints of the Guardian article). In addition, two major media outlets have covered the Cambone notes obtained by the requester under FOIA without specifically citing requester or outragedmoderates.org: The New York Times, in a February 24, 2006 column by Paul Krugman (Exhibit K), and PBS, in the PBS Frontline documentary "Bush's War." (Exhibit L) While these two instances do not constitute distribution of requester's work under the meaning of FOIA, they provide additional evidence of the scope of requester's audience, and his ability to disseminate records similar to the ones requested here.

In addition to traditional media outlets, outragedmoderates.org has been covered or cited by a wide range of blogs and other web-only media outlets. These include major sites like Salon.com, Andrew Sullivan's blog for Time.com (which has since moved to The Atlantic Monthly's website) (Exhibit M), MSNBC.com's Clicked blog, National Journal's Beltway Blogroll site, Common Dreams, The Raw Story, Crooks and Liars, Slashdot.org, and Metafilter. The blog has received coverage from sites representing a wide variety of viewpoints, including the grassroots media network Indymedia, centrist blog The Moderate Voice, and the anti-neoconservative blog The Project for the Old American Century. Finally, the blog has also received coverage from a

number of blogs which focus on specific areas of policy expertise, like the international law blog *Opinio Juris* (Exhibit N), the government transparency blog *The Memory Hole*, technology law blog *Corante*, and foreign policy blogs like *Democracy Arsenal* and *Steve Clemons' The Washington Note* (Exhibit O). Most of this coverage can be traced directly to emails the requester has sent to blogs promoting the blog's work, or indirectly to those emails, in cases where a blog/web-only media outlet covered *outragedmoderates.org* in response to coverage by a recipient of requester's emails in the traditional media or blog/web-only category.

A third channel requester has used to distribute his work to an audience, aside from publishing it on the website, is through *outragedmoderates.org*'s peer-to-peer networking component, which requester has publicized through multiple channels. Requester has distributed his work to a considerable audience through the BitTorrent network: during one four-month period, May 1, 2005, and August 31, 2005, requester's five most popular document torrents were downloaded a combined 6,200 times, totaling 426 gigabytes of data, or 106.5 gigabytes per month. When requester creates a new BitTorrent file from a group of documents, he creates a brief description explaining the editorial selection of the documents in the torrent and listing the documents' titles and sources. Then, requester posts a link to the torrent on the Government Document Library page, and on popular torrent sites where BitTorrent network users can find digital content to download (sites used include Prodigem, no longer in service, and Isohunt), along with the description of the torrent and its contents. Finally, requester sends emails to other blogs including the torrent link and description, and asks those blogs to consider posting the torrent link. For example, the popular technology blog *BoingBoing.net* has provided links to the requester's torrents on several occasions, including a torrent that the requester created after Mark Felt was unmasked as Watergate's "Deep Throat," consisting of various audio files that the requester selected from the Nixon Tapes that involved Felt. (Exhibit P)

A fourth channel requester has used to distribute his work to an audience, aside from publishing it on the website, is through email newsletters sent to the several hundred readers who have subscribed to the mailing list through a link on *outragedmoderates.org*. These newsletters have included links to requester's work in the form of *outragedmoderates.org* posts, as well as links to selected news items from other sources accompanied by requester's commentary on why the items were relevant or noteworthy. This use of a newsletter to disseminate information to interested readers is similar to the online newsletters the courts cited in *Center For Public Integrity vs. US Department of Health and Human Services*, Civil Action No. 06-1818 (JDB) (D.D.C. August 3, 2007) and *Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

Finally, like the plaintiff in *VoteHemp, Inc.*, requester has distributed his work through communications with federal legislators. When a bill which would potentially outlaw peer-to-peer networking was introduced to Congress in 2004, requester created a PowerPoint presentation which explained *outragedmoderates.org*'s non-infringing use of the technology as part of the Download For Democracy campaign, and cited other groups which disseminate political information through peer-to-peer networks. The presentation provided an overview of *outragedmoderates.org*, stating that the blog "focuses on disseminating and analyzing government documents" and including a representative document excerpt from one of the blog's posts discussing KBR's Iraq contract, which requester had selected and cropped from a FOIA

release obtained by Judicial Watch. (See excerpt, Exhibit Q) Moreover, when requester obtained the Cambone notes under FOIA in 2006, he emailed links to his work involving the document to several members of Congress who had been critics of the Bush administration's pre-Iraq intelligence.

C. Requester Has Firm Intention to Publish the Requested Records

In Judicial Watch, Inc. v. U.S. Dep't of Justice, No. 99-cv-2315, 2000 WL 33724693 (D.D.C. Aug. 17, 2000), the court stated that under the precedent of the National Security Archive case, new media fee waiver applicants must express a "firm intention" to publish documents related to information sought in a FOIA request. The court went on to clarify that "firm intention" requires a "detailed and clear publication plan which, for example, lists the precise sources to be consulted, describes the manner in which information will be organized in the publication, and illustrates the editorial and organizational efforts to be provided."

The requester's dissemination plan for the records requested in this matter includes distribution to an audience through a variety of channels. First, requester will publish key excerpts of the documents through a document analysis post on [outragedmoderates.org](http://outragedmoderates.org), alongside information cited from other sources (like Woodward's *Plan of Attack*) to provide context for the documents, and requester's original editorial commentary on their meaning and significance. Given that the record at the core of the request is a presentation approximately 48 to 60 pages long (or possibly longer), requester plans for this document analysis post to include section-by-section analysis and commentary, to make the information in the record more accessible to readers.

Second, requester will publicize the release of the records, and requester's analysis and commentary on the documents by creating a press release which quotes both the records and requester's work, and provides a link to the content on [outragedmoderates.org](http://outragedmoderates.org). This press release will be emailed to traditional media outlets, bloggers and other web-only media outlets, subscribers to [outragedmoderates.org](http://outragedmoderates.org)'s free email newsletter, and to members of Congress.

Third, requester will make the records part of the Download For Democracy campaign, by adding the records to the Government Document Library, and creating a new torrent consisting of the documents combined with documents from other sources, for distribution on the BitTorrent network.

Thank you for your consideration of this request, and please email me with any questions.

Sincerely,



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